Supreme Court, U.S.
FILED

(1)

No. 021152 FEB -3 2003

OFFICE OF THE CLERK

In The

Supreme Court of the United States

NORAH THURMAN,

Petitioner,

v.

THE BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE,

Respondents.

On Petition For A Writ Of Certiorari To The State Of Louisiana Court Of Appeal, First Circuit

PETITION FOR A WRIT OF CERTIORARI

SCOTT D. WILSON
7916 Wrenwood Boulevard
Suite B
Baton Rouge, Louisiana 70809
(225) 216-7722
(225) 216-7732 Fax

Counsel of Record for Petitioner

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

27 pp

QUESTIONS PRESENTED FOR REVIEW

Norah Thurman, petitioner, was wrongfully dismissed from a Ph.D. program at Louisiana State University and Agricultural and Mechanical College ("LSU"). In at least two decisions, *Board of Curators, Univ. Of Mo. v. Horowitz*, 435 U.S. 78 (1978) and *Regents of University of Michigan v. Ewing*, 474 U.S. 214 (1985), this Court has addressed academic dismissals from colleges or universities. In both cases, the Court assumed the existence of a protected property interest giving rise to substantive rights under the due process clause to continued enrollment free from arbitrary state action. In *Ewing*, the Court set forth the standard for determining arbitrary and capricious behavior in this context: **"When judges are asked to review the substance of a genuinely academic decision, . . . they should show great respect for the faculty's professional judgment. Plainly, they may not override it unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment."** 474 U.S. at 225. LSU failed to follow its own published rules and policies.

1. Has the Louisiana court decided an important question of law in a way that conflicts with relevant decisions of this Court, particularly *Ewing* and *Horowitz*?

2. Does the dean of the graduate school's unprecedented dismissal of the entire graduate advisory committee indicate that the committee failed to actually exercise professional judgment?

QUESTIONS PRESENTED FOR REVIEW – Continued

3. Is there a genuine issue as to material fact concerning whether LSU violated Ms. Thurman's substantive due process rights by its substantial departures from accepted academic norms?

LIST OF ALL PARTIES

1. Norah Thurman, plaintiff-petitioner.
2. The Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, defendant-respondent.
3. Paul Hoffman, defendant.
4. James West, defendant.
5. Jana Oetting, defendant.
6. Jan Norris, defendant.
7. Hugh Buckingham, defendant.
8. John Larkin, defendant.

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OPINIONS BELOW

LSU moved for summary judgment in the trial court. Judge Michael McDonald denied LSU's motion for summary judgment (App. 3-6). LSU applied for supervisory writs to the Louisiana Court of Appeal, First Circuit, which granted the writ and reversed the district court on July 15, 2002 (App. 1-2). Ms. Thurman applied for writs to the Louisiana Supreme Court, which denied the writ application on November 8, 2002 (App. 7).

STATEMENT OF JURISDICTION

The judgment sought to be reviewed was entered on July 15, 2002, by the Louisiana Court of Appeal, First Circuit; the Louisiana Supreme Court denied discretionary review by order dated **November 8, 2002**. This Court has jurisdiction to review the judgment on a writ of certiorari pursuant to 28 U.S.C. 1257.

RELEVANT CONSTITUTIONAL PROVISIONS

No person shall be deprived of life, liberty, or property, except by due process of law.

Louisiana Constitution, article 1, section 2.

No state shall . . . deprive any person of life, liberty, or property, without due process of law.

Constitution of the United States, Amendment XIV, section 1.

STATEMENT OF THE CASE

A. The Advisory Committee and the Dissertation Defense.

Norah Thurman entered LSU's graduate school in the fall semester 1991. She was accepted into the doctoral program in the Department of Communication Sciences and Disorders ("COMD") in the spring semester 1992. At all relevant times, her advisory committee was composed of Jan Norris, Jana Oetting, Hugh Buckingham, Paul Hoffman (Ms. Thurman's major professor and chair of her advisory committee), and James West (from outside the department). LSU's Graduate Bulletin provides that **"[d]uring the entire period of work toward the doctorate, the student's program is directed by a special advisory committee."**

Ms. Thurman met with Hoffman, her major professor, about once a month while preparing her dissertation. Ms. Thurman would submit drafts of her dissertation to Hoffman, who would then edit the submissions and propose areas for further research. Hoffman also reviewed and approved the prospectus, and provided guidance to Ms. Thurman in terms of what to include in the dissertation and how to do the statistical analysis. Hoffman testified in deposition that he was the director of Ms. Thurman's dissertation, and that as such he would look at the work and try to make sure that it was headed in the right direction.

In February 1997, Ms. Thurman took her final examination, which was an oral defense before her graduate advisory committee. The committee decided not to accept Ms. Thurman's dissertation as written but to require Ms. Thurman to revise her dissertation. Ms. Thurman was

assigned a grade of "U" for the spring 1997 semester. According to Hoffman, a revision of a doctoral dissertation is required after most oral defenses, and the student is always assisted by the advisory committee during the rewrite.

B. The Requirement of an "Independent Revision."

In Ms. Thurman's case, however, her advisory committee required her to conduct an "independent" revision, without any guidance or direction from her committee during the period of revising her dissertation. The ostensible reason for requiring Ms. Thurman to conduct an independent revision was due to "numerous substantive problems" with the dissertation.

The "independent revision" requirement that LSU imposed on Ms. Thurman is directly contrary to the LSU Graduate Bulletin, which states that "[d]uring the entire period of work toward the doctorate, the student's program is directed by a special advisory committee." Hoffman testified that the advisory committee typically continues to work with the student and direct the dissertation and provide guidance during the revision process, and that never in his experience has any student other than Ms. Thurman been required to conduct an independent revision. Another member of Ms. Thurman's advisory committee, James West, testified that he had never before seen or heard of a requirement that a student conduct an independent revision. Similarly, John Larkin, the interim dean of the graduate school at relevant times, testified that he has never seen an independent revision requirement other than in Ms. Thurman's case.

Ms. Thurman met with the interim dean of the graduate school, John Larkin, on March 12, 1997, to discuss her concerns about the handling of her dissertation. She wrote to Larkin on August 5, 1997 to express her concerns about the apparent bias of her committee against her, to question the committee's motives, and to complain about the unprecedented requirements being imposed on her.

Ms. Thurman revised her dissertation without any access to and without any guidance or input from her advisory committee during her rewrite. She submitted the revised dissertation in October 1997 and received a grade of "S" for the fall 1997 semester.

C. The Alleged Vote to Fail the Dissertation and the Reckless Accusation.

According to LSU, the committee allegedly met in January 1998. Apparently no one knows the date or location of this alleged meeting. Ms. Thurman was not invited to attend the meeting to defend her dissertation, another unprecedented procedural irregularity. At the meeting, the committee allegedly voted to fail Ms. Thurman's dissertation; there are no records or notes of this meeting. Ms. Thurman suspects that the committee's decision to fail her dissertation was motivated wholly or in substantial part by retaliation for Ms. Thurman's having gone to Larkin to complain about the unfair and unusual requirement that she conduct an independent revision without supervision.

Hoffman testified that, other than Ms. Thurman, he has not been involved in any situations where a dissertation failed.

Hoffman wrote to Ms. Thurman on January 28, 1998, advising Ms. Thurman of the committee's decision to fail her dissertation. Most startling in Hoffman's letter is his reckless and false allegation that the "most severe problem with the document involved a breech [sic] of academic integrity with regard to the conduct of the study and its reporting." LSU failed to follow its own policies and procedures regarding this damaging allegation. LSU Policy Statement PS-69 provides detailed procedures for immediately reporting and investigating allegations of misconduct in research. It specifically provides that if the investigation fails to substantiate the charges, LSU "will undertake reasonable efforts to restore the respondent's reputation." Ms. Thurman was never informed of any investigation as required by PS-69. There was certainly no effort made to restore Ms. Thurman's reputation. LSU denied Ms. Thurman due process in connection with this reckless, unsubstantiated, and harmful allegation.

D. The First Appeal and the Larkin Agreement.

Interim Dean Larkin wrote to Ms. Thurman on March 17, 1998, forwarding the forms under LSU Policy Statement PS-48.03 for a grade appeal. Larkin's letter stated that steps 1 and 2 (which would have involved Hoffman) would not need to be followed, and in his deposition he testified that this was because by that time the relationship between Ms. Thurman and Hoffman "had dissipated to the point that I did not think it would be fair to make her go back there unless she wanted to."

On August 20, 1998, Ms. Thurman submitted the Student Appeal Form, including a detailed Statement of Appeal. Larkin acknowledged receipt of the appeal by

letter dated September 1, 1998. PS-48.03 at that time required that "the dean or other administrator must make his decision within 30 days of receipt of the student's appeal." Larkin wrote Ms. Thurman on November 6, 1998, that "the normal 30 day period to resolve you [sic] case cannot be adhered to." Ms. Thurman followed all procedures for an appeal, but LSU did not.

On December 22, 1998, Larkin wrote to Ms. Thurman to advise her as follows:

> **I have completed a thorough investigation of your grade appeal in COMD 9000 and have reached the following decisions. Your grade for COMD 9000 for the spring semester of 1998 will be changed from a U to a S and you will be given a chance to rewrite and defend your dissertation before a new committee during the upcoming spring semester.**
>
> **I am appointing Dr. Tashakkori from ELRC and Dr. Wandersee from EDCI to read your dissertation and provide a critique that will provide you with the guidance you will need for any necessary revisions of your dissertation document. When any revisions are completed you will be allowed to defend your dissertation with a new committee.**
>
> **[A]s you make any necessary revisions to your dissertation, you can contact any member of your committee for input and advice. You can use any means for doing this including personal visits, mail, email, or telephone.**

Clearly, Larkin had dismissed Ms. Thurman's entire graduate advisory committee after completing "a thorough investigation" of her grade appeal. This unprecedented action demonstrates that the actions of the professors comprising Ms. Thurman's graduate advisory committee substantially departed from accepted academic norms of the university. Larkin's action alone creates a genuine issue as to material fact as to whether LSU thereby denied Ms. Thurman due process, and prevents summary judgment here. The state appellate court apparently ignored Larkin's action and his letter of December 22, 1998.

E. The Findings of Tashakkori and Wandersee.

After reviewing the dissertation, both Tashakkori and Wandersee expressed concerns about the design of the study. The design of the study was of course approved and in fact directed by Ms. Thurman's advisory committee. The allegedly fatal flaws identified by Tashakkori and Wandersee were problems that Ms. Thurman's advisory committee either negligently failed to prevent or affirmatively directed.

For example, both Tashakkori and Wandersee criticized Ms. Thurman's use of parametric statistical analysis (as distinguished from nonparametric analysis) in her dissertation. But the fact is that Hoffman specifically recommended that Ms. Thurman use parametric analysis.

The advisory committee approved the design of the study in Ms. Thurman's prospectus, and in Ms. Thurman's oral defense in February 1997 there was no suggestion that the dissertation had fatal flaws in its design. Instead, Ms. Thurman's advisory committee felt that it would have been possible to correct whatever flaws were identified.

The comments of Tashakkori and Wandersee confirmed Larkin's decision to dismiss Ms. Thurman's graduate advisory committee for failure to teach and supervise in accordance with "accepted academic norms." The state appellate court either ignored these professors' comments or failed to grasp their import.

F. Larkin's Startling About-face.

Larkin had proposed a new procedure on December 22, 1998, that promised Ms. Thurman would receive a critique that would provide guidance for any necessary revisions, and that when any revisions were completed with the guidance of a new graduate advisory committee, she will be allowed to defend her dissertation before the new committee. If these promises had been kept, Ms. Thurman would not be in court now. Unfortunately, however, LSU failed to keep its promise to follow the procedures outlined in Larkin's letter.

More than a month after receiving Tashakkori and Wandersee's memoranda, and having received no indication from LSU that it would follow Larkin's December 22 letter, Ms. Thurman wrote to Larkin on March 14, 1999, proposing to revise her dissertation to address their concerns. Larkin's response of April 7, 1999, is astonishing. His letter to Ms. Thurman states, "You told me in no uncertain terms in our last meeting that you would not make any changes to your document." This statement is obviously false, as a quick review of Larkin's December 22, 1998, letter to Ms. Thurman and his January 6, 1999, letter to Tashakkori and Wandersee makes clear. These letters discuss practically nothing but the proposition that Ms. Thurman would revise her dissertation with guidance

from Tashakkori and Wandersee and under the direction of a new advisory committee that Larkin would appoint.

Larkin's April 7, 1999, letter to Ms. Thurman went on to advise her that April 10 at noon was the "final date for turning in an acceptable dissertation, and I do not see how you could make the appropriate changes, defend them before a committee, and make any subsequent revisions within that time. Thus, it appears likely that you will receive a U in research again this semester. If this occurs, you may, of course, file an appeal of the grade as you did in the past." It is unclear exactly who assigned Ms. Thurman the grade of "U" for the spring semester, because there was no committee in place. Under LSU policy, an advisory committee is the only entity charged with advising, directing, and evaluating a doctoral student's progress.

G. The Second Appeal.

In response to this, Ms. Thurman on April 13, 1999, wrote to LSU Chancellor William Jenkins. She advised that she had revised her dissertation to address the concerns expressed by Tashakkori and Wandersee, and she invited Jenkins to contact her to discuss means by which to resolve the situation. At this point, there was no one to whom Ms. Thurman could submit her revised dissertation, as no committee had been appointed for her.

In fact, LSU responded on May 11, 1999, discussing the appointment of a new committee to be composed of "four faculty members appointed by Dr. Larkin." This letter states that LSU considered Ms. Thurman's April 13 letter as an appeal. In her May 24, 1999, letter, Ms. Thurman expressly asked to whom she should send her revised dissertation. She never received an answer. LSU

failed to follow its established appeal procedures in connection with this appeal by Ms. Thurman.

H. Court Action.

Ms. Thurman filed suit in Louisiana state court on November 15, 1999, alleging denial of due process. The state district court denied LSU's motion for summary judgment. LSU applied for supervisory writs to the Louisiana Court of Appeal, First Circuit, which granted the writ and summarily reversed the district court on July 15, 2002. Ms. Thurman applied for writs to the Louisiana Supreme Court, which denied the writ application on November 8, 2002.

REASONS FOR ALLOWANCE OF WRIT

The Louisiana court has decided an important question of law in a way that conflicts with relevant decisions of this Court.

In at least two decisions, *Board of Curators, University of Missouri v. Horowitz*, 435 U.S. 78 (1978) and *Regents of University of Michigan v. Ewing*, 474 U.S. 214 (1985), this Court has addressed cases involving academic dismissals from colleges or universities. In both cases, the Court assumed the existence of a protected property interest giving rise to substantive rights under the due process clause to continued enrollment free from arbitrary state action. In *Ewing*, the Court set forth the standard for determining arbitrary and capricious behavior in this context: "When judges are asked to review the substance of a genuinely academic decision, . . . they should show great respect for the

faculty's professional judgment. Plainly, they may not override it unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment." 474 U.S. at 225. In the case at bar, LSU acted arbitrarily and capriciously; LSU's substantial departure from accepted academic norms (its own published policies and rules, including Larkin's December 22, 1998, letter dismissing the entire advisory committee) demonstrates that LSU did not actually exercise professional judgment.

In addition, in *Horowitz*, the Court in reaching its conclusion that "a hearing is not required"[1] by the due process clause, emphasized the "significant and historically supported interest of the school in preserving its present framework for academic evaluations." 435 U.S. at 87, n. 3. To the extent that LSU's " interest . . . in preserving its present framework for academic evaluations" is implicated, this interest is thwarted, not furthered, by allowing LSU to disregard its own published policies. Besides, *Horowitz* deals with procedural due process, and this case involves primarily substantive due process. The *Horowitz* court acknowledged this distinction and found it

[1] At least one court has expressed disagreement with the conclusion that no hearing is required for academic dismissals. See *Stoller v. College of Med.*, 562 F.Supp. 403, 414 (M.D.Pa. 1983) (evaluating concurring and dissenting opinions of other justices in *Horowitz*, court concluded that "Justice Rehnquist's belief that the due process clause does not require a hearing for dismissal for academic reasons is not the view at this time of the majority of the Supreme Court and therefore is not the law of the land. Justice Rehnquist's statement is not necessary to his decision and is dicta."), *aff'd*, 717 F.2d 1101 (3d Cir. 1984).

necessary to address whether a showing of arbitrariness or capriciousness had been made in that case, even after deciding the procedural due process claim adversely to the plaintiff.

LSU's failure to follow and comply with its own written policies constitutes a substantial departure from accepted academic norms, which is a violation of substantive due process. *Ewing*, 474 U.S. at 225. This substantial departure reveals that LSU did not actually exercise professional judgment, or at the very least there is a genuine issue of material fact on this point.

In *Bodker v. La. St. High School Athletic Assn.*, 472 So.2d 941 (La.App. 1 Cir. 1985), the Court stated that "when the Association has adopted certain rules in its own Constitution and Bylaws, which set forth certain procedural requirements, 'minimum' due process requires the Association to abide by its own rules." 472 So.2d at 945. Similarly, in the case at bar, when LSU has adopted certain rules, setting forth certain procedural requirements, minimum due process requires LSU to abide by its own rules. LSU did not have to adopt or enact any specific procedural rules or policies, and could even now abolish its procedural rules and policies[2]; but once it established and

[2] In fact, PS-48, LSU's appeal policy, has been amended since Ms. Thurman's appeal in certain significant respects. For example, when Ms. Thurman took her appeal, the policy provided that at step three, "the dean or other administrator must make his decision within 30 days from the date of receipt of the student's appeal." This was not done here. The amended policy changes the above mandatory language to: "the Step Three administrator will make every reasonable effort to make a decision within 30 calendar days from the date of receipt of the

(Continued on following page)

published its own policies and rules, due process requires that it follow them. *Ewing* informs us that LSU's substantial departure from its accepted academic norms reveals that professional judgment was not actually exercised, but that LSU acted arbitrarily and capriciously.

Under the facts presented here and the law as expressed in *Bodker*, *Ewing*, and *Horowitz,* there can be no doubt that LSU has denied Ms. Thurman due process by violating and failing to follow its own established procedures.

Ewing establishes Ms. Thurman's substantive due process right to pursue her doctorate free from arbitrary state action, and defines the relevant standard as whether the academic decision was "such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment." There is a genuine issue of material fact on this issue in this case.

To this day, Ms. Thurman still has her revised dissertation and is prepared to submit it, but LSU has failed to appoint a committee for her as required by LSU policies and as promised by Larkin in his December 22, 1998, letter. LSU's actions have been irrational and motivated by bad faith or ill will unrelated to Ms. Thurman's academic performance. Its actions have not been a valid exercise of professional academic judgment.

---

student's written appeal." At the relevant time, the 30-day period was mandatory, and the "reasonable effort" language was not in effect.

CONCLUSION

For the foregoing reasons, this Court should grant a writ of certiorari in this matter and reverse the Louisiana Court of Appeal, First Circuit, and remand this matter to the state district court for further proceedings. Alternatively, this Court should reverse and render judgment in favor of Ms. Thurman, and remand to the district court for calculation of damages.

Respectfully submitted,

SCOTT D. WILSON
7916 Wrenwood Boulevard
Suite B
Baton Rouge, Louisiana 70809
(225) 216-7722
(225) 216-7732 Fax

Counsel of Record for Petitioner

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

NORAH THURMAN

VERSUS

THE BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE

NO. 2002 CW 0599

JUL 15 2002

In re: The Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, applying for supervisory writs, 19th Judicial District Court, Parish of East Baton Rouge, No. 466,572, Div. "H"

BEFORE: CARTER, WHIPPLE, GUIDRY, DOWNING AND JAMES, JJ.

WRIT GRANTED. The trial court erred in denying relator's motion for summary judgment. When judges are asked to review the substance of a genuinely academic decision, such as this one, they should show great respect for the faculty's professional judgment. Plainly, they may not override it unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment. **Regents of University of Michigan v. Ewing**, 106 S.Ct. 507, 474 U.S. 214, 80 L.Ed.2d 523 (1985). Plaintiff cannot demonstrate in the case at bar that relator and/or its faculty substantially departed from accepted academic norms and did not exercise professional judgment. Moreover, as the Supreme Court held in **Board of Curators of University of Missouri v. Horowitz**, 98

S.Ct. 948, 435 U.S. 78, 55 L.Ed.2d 124 (1978), a student dismissed for academic reasons is not entitled to a hearing before the decisionmaker, but the student must only receive notice of the school's dissatisfaction with his or her academic performance and with the threat of possible dismissal. In the case at bar, plaintiff received such notice. Regarding plaintiff's claim that relator failed to follow its procedures regarding the allegation of breach of academic integrity, this allegation was not the basis upon which plaintiff's dissertation was failed; therefore plaintiff cannot demonstrate any prejudice from the alleged failure to follow school procedures. As to plaintiff's complaint that appeal procedures were not followed, in those instances, the actions were to accommodate plaintiff. Therefore, the writ is granted, the judgment of the trial court denying the motion for summary judgment is reversed, the motion for summary judgment is granted, and judgment is entered in relator's favor, dismissing plaintiff's petition with prejudice.

ACJ
BJC
VGW
RDD

Guidry, J., dissents and would deny the writ.

COURT OF APPEAL, FIRST CIRCUIT

/s/ [Illegible]
DEPUTY CLERK OF
COURT
FOR THE COURT

Judge A. Clayton James is serving as judge *pro tempre* by special appointment of the Louisiana Supreme Court.

NINETEENTH JUDICIAL DISTRICT COURT
STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

NORAH THURMAN	:	
	:	
VERSUS	:	NUMBER
THE BOARD OF SUPERVISORS OF	:	466,572
LOUISIANA STATE UNIVERSITY	:	DIVISION "H"
AND AGRICULTURAL AND	:	
MECHANICAL COLLEGE	:	

ORDER

(Filed Feb. 21, 2002)

This matter came before the Court on Monday, January 28, 2002, on a motion for summary judgment filed by defendant the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College. Considering the law, the evidence, and the arguments of counsel, and for reasons orally assigned:

IT IS ORDERED that the motion for summary judgment is DENIED, the Court believing there are genuine issues of material fact.

Baton Rouge, Louisiana, this 25th day of February, 2002.

/s/ J. Michael McDonald
Judge, Nineteenth
Judicial District Court

Respectfully Submitted by Attorneys:

TAYLOR, PORTER, BROOKS & PHILLIPS, L.L.P.

By /s/ John P. Murrill
John P. Murrill (#23878)
451 Florida St., 8th Floor
Post Office Box 2471
Baton Rouge, Louisiana 70821
Telephone: (225) 387-3221
Facsmile: (225) 346-8049

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was this day mailed, postage prepaid, to Scott D. Wilson, 7916 Wrenwood Boulevard, Suite "B", Baton Rouge, Louisiana, 70809.

Baton Rouge, Louisiana, this 21 day of February, 2002.

/s/ John P. Murrill
John P. Murrill

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
CIVIL DIVISION "H"

NORAH THURMAN	*	NO. 466,572
VS.	*	(Filed
BOARD OF SUPERVISORS OF LSU, ET AL.	*	Feb. 15, 2002)

ORAL REASONS FOR JUDGMENT
MONDAY, JANUARY 28, 2002
BEFORE THE
HONORABLE J. MICHAEL MCDONALD,
JUDGE PRESIDING

APPEARANCES:

SCOTT D. WILSON : ON BEHALF OF PLAINTIFF

JOHN P. MURRILL : ON BEHALF OF DEFENDANT

REPORTED BY
CARMEL M. BURNS, CCR
OFFICIAL COURT REPORTER

/s/ Carmel M. Burns
DY. CLERK OF COURT

A TRUE COPY
/s/ Carmel M. Burns
DY. CLERK OF COURT

MONDAY, JANUARY 28, 2002

THE COURT: ALL RIGHT. THE QUESTION FOR THE COURT TODAY IS NOT TO DECIDE WHETHER SHE WILL PREVAIL OR WHAT SHE MIGHT GET IF SHE DOES – WELL, I GUESS PARTLY THAT'S WHAT I AM HERE TO DO. THE QUESTION IS ARE THERE ANY MATERIAL FACTS AT ISSUE HERE AND I THINK THERE ARE AND THE MOTION IS DENIED.

CERTIFICATE

I, CARMEL M. BURNS, OFFICIAL COURT REPORTER, NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA, DO HEREBY CERTIFY THAT THE FOREGOING PAGES CONSTITUTE A TRUE AND CORRECT TRANSCRIPT OF THE CAPTIONED PROCEEDINGS, AS TAKEN BY ME ON THE STENOTYPE MACHINE, TO THE BEST OF MY KNOWLEDGE AND ABILITY.

WITNESS MY HAND, THE 14TH DAY OF FEBRUARY, 2002.

/s/ Carmel M. Burns
CARMEL M. BURNS, CCR #87178
OFFICIAL COURT REPORTER
NINETEENTH JUDICIAL
DISTRICT COURT

The Supreme Court of the State of Louisiana

NORAH THURMAN

VS.

NO. 2002-CC-2173

THE BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE

IN RE: Thurman, Norah; – Plaintiff; Applying for Supervisory and/or Remedial Writs, Parish of E. Baton Rouge, 19th Judicial District Court Div. H, Nos. 466,572; to the Court of Appeal, First Circuit, No. 2002 CW 0599

November 8, 2002
Denied.

CDT
PFC
CDK
BJJ
JPV
JTK
JLW

Supreme Court of Louisiana
November 8, 2002

/s/ [Illegible]
Deputy Clerk of Court
For the Court

Supreme Court, U.S.
FILED
FEB 20 2003
CLERK

No. 02-1152

In The

Supreme Court of the United States

NORAH THURMAN,

Petitioner,

versus

THE BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE,

Respondent.

On Petition For Writ Of Certiorari To The Louisiana Court Of Appeal, First Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JOHN P. MURRILL
Louisiana Bar Roll Number 23,878
Counsel Of Record For Respondent
TAYLOR, PORTER, BROOKS & PHILLIPS, L.L.P.
P. O. Box 2471
Baton Rouge, Louisiana 70821
(225) 387-3221

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

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RULES:

Due Process Clause of the Constitution of the United States 17

Rule 10 of the Supreme Court of the United States 16

STATEMENT OF THE CASE

A. Facts

The plaintiff, seeking a doctoral degree in communication disorders, enrolled in the Graduate School of Louisiana State University ("LSU") in the Fall 1991 semester. At all relevant times, her major professor was Paul Hoffman, the chair of the Department of Communication Sciences and Disorders. The other members of her graduate advisory committee were Jan Norris, Janna Oetting, and Hugh Buckingham, all of whom were professors in the same department. A fifth committee member, Professor Jim West, was appointed from outside the department as required by the Graduate School Handbook.

As is typical of doctoral students, Thurman spent the first several years of her program taking graduate level courses in a traditional classroom setting, then spent the remainder of her program researching and writing her dissertation. While preparing her dissertation, she typically met with Hoffman, her major professor, once a month. The plaintiff would submit drafts of her dissertation to Hoffman, who would then edit the submissions and propose areas for further research.

In the Spring 1997 semester, Thurman took her final examination, which consisted of an oral defense of her dissertation before her graduate advisory committee. The committee members unanimously agreed that the dissertation did not deserve a passing grade. They noted numerous substantive problems with the written dissertation itself; even more troubling, Thurman did not appear to have a clear and detailed understanding of her own project, as she was unable to satisfactorily explain or defend the literature, the methods, the statistics, or the

results of her research. The committee was thus concerned that Thurman had relied too heavily on her major professor and had not demonstrated the ability to do independent research and writing.

Despite their reservations, the committee members gave Thurman another chance to obtain her degree. To demonstrate that she was capable of working independently, Thurman was instructed to revise the document using only the oral and written feedback given to her at the final exam, without any additional consultation with Hoffman or the other committee members. She would then be allowed to resubmit the dissertation in the Fall 1997 semester. In light of her poor performance at the final examination, Thurman received a grade of "U" (unsatisfactory) for the Spring 1997 semester.

The plaintiff submitted the revised dissertation in October 1997. With the approach of the holiday season and undergraduate exams, Hoffman was unable to convene a meeting of Thurman's committee prior to the end of the semester. Thurman was given a grade of "S" (satisfactory) for the Fall 1997 semester.

The committee met in January 1998 to evaluate the revised dissertation. The committee members believed that the paper still contained numerous substantive problems; incredibly, they also noted that Thurman had ignored much of the specific feedback given to her at the oral defense in February 1997. The committee therefore unanimously voted to fail the revision and to assign a grade of "U" for the Spring 1998 semester.

According to the LSU Graduate School Handbook, a student who receives a second grade of "U" is subject to being dropped from the Graduate School. Because

Thurman had now received two "U's," she was notified at the conclusion of the Spring 1998 semester that she was being dropped as a student from the Graduate School.

The plaintiff appealed the "U" she received for the Spring 1998 semester to John Larkin, the Senior Associate Dean of the Graduate School. During the appeal process, Thurman complained (mistakenly) that her committee members might not understand her research, that her dissertation involved a specialized subject matter with which her committee members might not be familiar. Thurman also complained that her committee was never going to pass her dissertation, having twice rejected the paper already. In response, Larkin asked whether Thurman believed there were any faculty members at LSU other than her current committee members who might be able to fairly evaluate her dissertation. Thurman identified two other LSU professors: Abbas Tashakkori and Jim Wandersee.

In December 1998, Larkin granted the plaintiff's appeal and changed her grade for the Spring 1998 semester from a "U" to an "S." Larkin based his decision on Thurman's complaint that her committee might not have fully understood the allegedly specialized subject matter of her research. Larkin told Thurman that she would be allowed to informally submit her dissertation to Professors Tashakkori and Wandersee, who would critique her paper. Afterward, the plaintiff could revise the paper as she felt appropriate and formally resubmit it for grading in the Spring 1999 semester. In response to Thurman's complaint that her original graduate committee would never pass her dissertation, Larkin said he would form a new committee to whom the plaintiff could submit her paper.

Tashakkori and Wandersee reviewed the plaintiff's dissertation in early 1999. Like the plaintiff's original committee, both men felt the document contained numerous substantive flaws, many of which were fatal. They each wrote detailed memos to Larkin expressing their specific concerns in February 1999, and Larkin forwarded the memos to the plaintiff for her consideration in March.

On March 14, 1999, Thurman wrote Dean Larkin and proposed that she make certain of the revisions suggested by Tashakkori and Wandersee. She also requested that Larkin "make a decision as to whether the proposed revision of this document will be acceptable." As she candidly acknowledged in her deposition, Thurman was now changing her tactic; instead of having her dissertation approved by a graduate committee like other students who receive their Ph.D. from LSU, she was now proposing that Dean Larkin, a man with no training whatsoever in communication sciences and disorders, assign a grade to the document. Furthermore, she was proposing that Larkin *tell her in advance* whether "the proposed revision . . . will be acceptable." Larkin declined the invitation.

On April 13, 1999, Thurman wrote to Chancellor William Jenkins and again demanded that she be awarded her degree. LSU declined the proposal. LSU further notified Thurman that because she had now passed her seven-year deadline in the program without submitting an acceptable dissertation, she would receive yet another

grade of "U."[1] This "U," officially her second (after her "U" in the Spring 1998 semester was reversed on her appeal) would normally have resulted in her being dropped from the Graduate School. However, LSU informed Thurman that it would consider her April 13 letter to Jenkins as an appeal (even though she had not designated the letter as such), thus preserving for Thurman the ability to challenge the grade and remain in the Graduate School.

Thurman chose not to appeal and once again reiterated her demand that she be awarded her degree. LSU again rejected the demand and reminded Thurman that her seven years in the program had expired. LSU informed the plaintiff, however, that it would grant her an extension of time and allow her to remain in the doctoral program and pursue her degree, but that she would still be required to submit the dissertation for review to a committee.

The plaintiff rejected this final overture from LSU. She never did submit a revised copy of her dissertation during the Spring 1999 semester.

B. Procedural History

Norah Thurman filed this lawsuit against LSU in November 1999 in the Nineteenth Judicial District Court for the State of Louisiana. She claims that she was denied due process while a graduate student.

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[1] Doctoral students have seven years in which to complete their program; if they have not completed their degree requirements within seven years, the Graduate School has the discretionary power to extend the deadline.

In December 2001, LSU filed a motion for summary judgment as to all claims. After a hearing on January 28, 2002, the trial court denied the motion.

LSU subsequently filed an application for a supervisory writ of review with the Louisiana Court of Appeal for the First Circuit. On July 15, 2002, the First Circuit granted the writ, reversed the trial court, and entered judgment in LSU's favor dismissing all of the plaintiff's claims against LSU.

On August 14, 2002, Thurman filed an application for supervisory review with the Louisiana Supreme Court. That court unanimously denied the plaintiff's application on November 8, 2002.

Thurman filed a petition for a writ of certiorari with this Court on or about February 3, 2003.

ARGUMENT

A. The Independent Revision

Thurman defended her original dissertation in the Spring 1997 semester. When the committee conferred at the conclusion of the defense, they unanimously agreed that the dissertation did not deserve a passing grade. They noted numerous substantive problems with the written dissertation itself; furthermore, Thurman did not appear to have a clear and detailed understanding of her own research and was unable to satisfactorily explain or defend the literature, the methods, the statistics, or the results of her research. The committee was thus concerned that Thurman had relied too heavily on her major professor and had not demonstrated the ability to do independent

research and writing. However, even though the committee members unanimously agreed the dissertation did not deserve a passing grade, they gave her another chance to obtain her degree by allowing her the opportunity to revise the paper according to the feedback given to her at the oral defense, without any further input from Hoffman or the committee.

Thurman claims she was denied due process because she was required to revise her dissertation without further assistance from her major professor and committee. Her burden is to show that the committee's decision to require the independent revision was such a substantial departure from accepted academic norms that they could not have exercised professional judgment. *Regents of the University of Michigan v. Ewing*, 474 U.S. 214, 225, 106 S. Ct. 507, 513, 88 L. Ed. 2d 523 (1985). However, the undisputed evidence compels precisely the opposite conclusion. The committee believed, based on the widespread problems with the dissertation itself and on Thurman's inability to satisfactorily explain or defend her own dissertation, that she had not demonstrated the ability to work independently. They responded by giving Thurman a final opportunity to demonstrate that ability and to obtain her degree, by performing the independent revision using only the feedback given to her at the oral defense. The plaintiff's committee members exercised their professional academic judgment to formulate a response specifically tailored to

address their specific concern. In doing so, they acted entirely in accordance with prevailing academic norms.[2]

Thurman also complains that the independent revision was contrary to the Graduate Bulletin, which states that "during the entire period of work toward the doctorate, a student's program is directed by a special advisory committee." However, the committee's concern was that Thurman had relied too heavily on her major professor and committee, that she had completely failed to demonstrate the ability to do independent research and writing. They responded by narrowly tailoring a specific response to address a perceived academic deficiency. Furthermore, Thurman conveniently neglects to quote another provision from the Graduate Bulletin: "Satisfaction of the minimum requirements of the Graduate School, as stipulated in this bulletin, in no way relieves a doctoral student of responsibility for satisfying any additional requirements deemed appropriate by the graduate faculty of the degree programs in which he or she is enrolled." In other words, the Bulletin specifically contemplates that more particularized requirements may be imposed on students to ensure they are deserving of the degree.

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[2] In depositions, John Larkin, Paul Hoffman, and Jim West were asked whether they personally knew of any other instance in which an advisory committee had required a student to independently revise his or her dissertation. All three men testified that they were not familiar with any similar situations. However, the issue is whether Thurman's committee exercised its professional judgment, not whether these faculty members had previously encountered a similar situation. As Larkin noted in his deposition: "That's not common as far as I know, *but it is certainly within the rights of the department to do that.*" (Emphasis added).

As noted in the Graduate Bulletin:

> [The doctoral degree] is conferred only for work of distinction in which the student displays decided powers of original scholarship and only in recognition of marked ability and achievement. . . . A [doctoral] student must prove ability to complete a significant program of original research by preparing a dissertation embodying creative scholarship. . . .

Thurman's advisory committee was concerned that she had not displayed "powers of original scholarship" or "marked ability and achievement," had not shown the ability to complete a program of "original research," and had not prepared a dissertation embodying "creative scholarship." They exercised their professional academic judgment to craft a response designed to ensure that the plaintiff could display the powers of original and creative scholarship necessary to obtain a Ph.D.

In her petition, Thurman characterizes the situation as if she had been left to grope her way through the revision without any guidance whatsoever. Her characterization is not only incorrect, it is inconsistent with her own deposition testimony. As she freely admitted in her deposition, her committee gave her significant amounts of feedback, both written and oral, to guide her during the re-write period. Thurman also testified that she received complete edited copies of the dissertation itself from Professors Norris and Oetting.

The committee's decision to require Thurman to do an independent revision was purely an exercise of their professional academic judgment that is incapable of being meaningfully reviewed in a court of law. A contrary ruling

would place a jury of lay persons in the position of dictating to LSU how it should respond to the perceived academic shortcomings of its graduate students.

B. False Allegations

Attempting to conjure an issue of fact where none exists, Thurman portrays the committee's decision in January 1998 to fail her revised dissertation as a sinister event. She says that "no one knows the date or location of this alleged meeting," she refers to the "alleged" vote to fail her revised dissertation, and she says that "there are no records or notes of this meeting." (Pet. at p.4.)

These allegations are false, and Thurman knows they are false. LSU produced the signed and dated examination card from this meeting almost three years ago, on April 5, 2000. The card was signed by all members of Thurman's committee, and each of them indicated in writing their vote to fail the dissertation. The card was also signed and approved by Dean Larkin on January 29, 1998, the day after the meeting. Thurman has acknowledged on several occasions during the course of this litigation that she received the examination card when it was produced by LSU, yet she continues to make these false allegations.

C. The Academic Integrity Non-Issue

When the plaintiff's committee failed her revised dissertation in the Spring 1998 semester, they noted that she appeared to have committed a breach of academic integrity by re-writing her methodology section to alter the manner in which she claimed to have conducted her research. Thurman now claims that LSU denied her due

process by failing to comply with the procedures defined in PS-69, a University policy statement regarding allegations of research misconduct. (Pet. at p.5.)

LSU's response is four-fold.

First, it is undisputed that LSU subsequently granted Thurman's appeal and changed her grade to "Satisfactory," notwithstanding the academic integrity issue; thus, LSU remedied the alleged harm. Second, Thurman's argument regarding PS-69 is wholly unsupported by the state court record and is nothing more than the argument of her attorney, as she did not bother to introduce PS-69 into evidence when she opposed LSU's motion for summary judgment, nor did she bother to introduce any testimonial evidence that would support her allegations regarding the contents of PS-69. Third, Thurman candidly admitted in her deposition that she herself was responsible for the committee's confusion regarding her methodology, that when she revised her dissertation she inadvertently omitted a key explanatory sentence from the methodology section. Fourth, the committee raised the academic integrity issue in a letter to Thurman dated January 28, 1998, yet Thurman did not file this lawsuit until November 15, 1999; accordingly, any legal claim arising from this specific factual allegation has long ago prescribed under Louisiana's one-year prescription period.

D. The Thirty-Day Non-Issue

Thurman alleges that LSU denied her due process when it failed to resolve her 1998 appeal within thirty days as required by PS-48, a University policy statement regarding student appeals. In support, she selectively lifts a quote from a letter from Dean Larkin in which he stated

he would be unable to respond within thirty days. Thurman conveniently fails to quote the rest of the letter, however, in which Larkin stated that he needed more time because Thurman herself had been so tardy in responding to Larkin's inquiries. Larkin also noted that the delay was attributable to Thurman's insistence that all communication between her and LSU first be routed through her attorney. The Louisiana Court of Appeal for the First Circuit expressly and correctly noted that any delays were to accommodate Thurman, not to hinder her. Furthermore, such an allegation is insufficient to amount to a denial of due process.

E. Thurman's Appeal Was Successful

As previously noted, the plaintiff's graduate advisory committee failed the revised dissertation and gave the plaintiff a grade of "U" for the Spring 1998 semester. Because this grade was the plaintiff's second "U," she would ordinarily have been dismissed from the University. However, Thurman appealed the grade to Dean Larkin in March 1998, and Larkin subsequently granted the appeal and changed the "U" to an "S."

Thurman's appeal was successful, the grade was changed, and she was allowed to remain in the Graduate School! Even if the plaintiff is correct (which she is not) that she had a right to consult with her major professor and committee while revising her dissertation, and even if she is correct (which she is not) that she should have been allowed a second oral defense, LSU remedied all of these alleged errors when it granted her appeal, changed the disputed grade, and allowed her to go forward with another committee and yet another revision of her paper.

F. The "Second Appeal"

Adhering to the principle that no good deed should go unpunished, Thurman seeks to make a legal issue of LSU's good faith offer to grant her a second appeal.

On April 13, 1999, Thurman's attorney wrote to Chancellor William Jenkins and demanded that Thurman be awarded her degree. LSU declined the proposal and notified Thurman that because she had now passed her seven-year deadline in the program without submitting an acceptable dissertation, she would receive yet another grade of "U." This "U," officially her second (after her "U" in the Spring 1998 semester was reversed on her appeal) would normally have resulted in her being dropped from the Graduate School. However, LSU offered to consider her April 13 letter to Jenkins as an appeal, even though she had not designated the letter as such. LSU made this offer to Thurman to preserve her ability to challenge the grade and remain in the Graduate School.

As she candidly acknowledged in her deposition, Thurman ignored LSU's offer of a second appeal:

> Q: But you chose not to go through with the appeal process?
>
> A: I don't think I did appeal. I know I didn't do an appeal.

Her attorney even wrote a letter on May 24, 1999, emphatically insisting that "this matter will not be 'returned to the academic arena.'" Yet now, desperately seeking to salvage her suit, Thurman makes the remarkable statement that "LSU failed to follow its established appeal procedures in connection with this appeal by Ms. Thurman." (Pet. at pp. 9-10.) In other words, LSU made a

good faith gesture to treat the April 13 letter as an appeal; it is undisputed that Thurman rejected LSU's offer, yet now she seeks to hold LSU accountable for not following its appeal procedures. This argument has no merit whatsoever.

G. Thurman Never Did Resubmit Her Dissertation

When Dean Larkin granted Thurman's appeal in December 1998, he did so specifically on the condition that she submit her dissertation in the Spring 1999 semester for grading by a new committee. Thurman never did submit her dissertation in the Spring 1999 semester. By failing to submit a new version of her dissertation for grading that spring, she failed to comply with the terms of her appeal and she allowed her seven years in the program to lapse without having submitted an acceptable dissertation.

H. Thurman Received Procedural Due Process And More

A student dismissed for academic reasons is not entitled to a hearing before the decision-maker; instead, it is only necessary that the student receive notice of the school's dissatisfaction with his or her academic performance and the threat of possible dismissal. *Board of Curators v. Horowitz*, 435 U.S. 78, 98 S. Ct. 948, 55 L. Ed. 2d 124 (1978).

Norah Thurman received far more than what *Horowitz* requires. LSU provided her with notice of its dissatisfaction with her academic performance on multiple occasions, including significant oral and written criticisms from her advisory committee at her final examination in

January 1997; written notification in May 1997 that she had received a grade of "U," and that a second "U" would result in her dismissal; written criticisms from her committee after she submitted her revised dissertation in the Spring 1998 semester; and written criticisms of her dissertation from Drs. Tashakkori and Wandersee.

Additionally, Thurman availed herself of LSU's student appeal procedure to challenge the grade of "U" that she received in the Spring 1998 semester. As a result of this appeal, she was granted a face-to-face hearing with John Larkin, the Interim Dean of the Graduate School, in December 1998. Thus, not only did LSU notify Thurman on numerous occasions of her poor academic performance and the threat of her possible dismissal, LSU went even further and granted the plaintiff an actual face-to-face meeting with the person who was to make the final decision on her appeal.

Finally, after Thurman's appeal was granted, LSU took the extraordinary step of allowing her to send her dissertation to two "outside" professors, Tashakkori and Wandersee, for additional feedback. Thurman had previously identified Tashakkori and Wandersee as LSU faculty members not on her committee who would understand the allegedly specialized subject matter of her dissertation and who were capable of reading and critiquing her dissertation and providing her with additional feedback.

Norah Thurman received far more procedural process than is required by the Constitution.

THERE ARE NO COMPELLING REASONS TO GRANT THE PETITION

Rule 10 of the Rules of the Supreme Court of the United States says that a petition for a writ of certiorari is only granted for compelling reasons, and that "a petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."

Certainly, there are no compelling reasons for granting Norah Thurman's petition. LSU gave Thurman numerous opportunities to obtain her degree. In February 1997, she submitted her original dissertation. (It was rejected.) In February 1998, she submitted her revised dissertation. (It was also rejected.) In December 1998, her appeal was granted, her grade was reversed, and she was given yet another opportunity to resubmit her dissertation in the Spring 1999 semester. (She failed to submit her dissertation during the Spring 1999 semester.) In May 1999, LSU offered to consider her demand letters as another appeal, which would have allowed her to remain in the program. (She rejected the offer.) In June 1999, LSU offered her an extension of time to remain in the program and work on her dissertation. (She rejected the offer.)

Norah Thurman simply complains that the lower courts made erroneous factual findings and misapplied this Court's decisions in *Regents of the University of Michigan v. Ewing*, 474 U.S. 214, 225, 106 S. Ct. 507, 513, 88 L. Ed. 2d 523 (1985), and *Board of Curators v. Horowitz*, 435 U.S. 78, 98 S. Ct. 948, 55 L. Ed. 2d 124 (1978). There is no compelling reason to grant the petition.

CONCLUSION

Norah Thurman was extended numerous opportunities to obtain her degree and was treated at all times in a manner entirely consistent with the requirements of the Due Process Clause. Notwithstanding these numerous opportunities, she never submitted a dissertation deserving of a doctoral degree. To this day, Norah Thurman's dissertation has never been approved by a single faculty member at LSU, and she is the only person involved in this litigation who believes that she deserves a Ph.D. or that she was mistreated in her pursuit of the degree.

Respondent is entitled to judgment as a matter of law and respectfully requests that this Honorable Court deny the petition for writ of certiorari.

By Attorneys,

TAYLOR, PORTER, BROOKS & PHILLIPS, L.L.P.

JOHN P. MURRILL
Louisiana Bar Roll Number 23,878
Counsel of Record for Respondent
P. O. Box 2471
Baton Rouge, LA 70821
Telephone: (225) 387-3221

(3)

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In The

Supreme Court of the United States

NORAH THURMAN,

Petitioner,

v.

THE BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE,

Respondents.

On Petition For A Writ Of Certiorari To The State Of Louisiana Court Of Appeal, First Circuit

REPLY TO BRIEF IN OPPOSITION

SCOTT D. WILSON
7916 Wrenwood Boulevard
Suite B
Baton Rouge, Louisiana 70809
(225) 216-7722
(225) 216-7732 Fax

Counsel of Record for Petitioner

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

6 pp

ARGUMENT

Ms. Thurman must respond to the section of LSU's brief entitled "False Allegations." First, Ms. Thurman points out the obvious: that a dispute as to material fact establishes the impropriety of summary judgment. The alleged "false allegations" have to do with an alleged meeting that LSU says took place in January 1998 among committee members who voted to fail Ms. Thurman. Ms. Thurman suspects that in fact the committee did not meet. She has stated that "no one knows the date of this alleged meeting," and that "there are no records or notes of this meeting." These statements have provoked LSU to claim the allegations are false and that Ms. Thurman knows they are false. In support of its claim, LSU relies on a single document that it produced, an examination card. Ms. Thurman acknowledges receiving a copy of this card. It is not as useful or informative as LSU would have this Court believe.

The card states that the Committee gave Ms. Thurman the final examination for the degree of Ph.D. in Communication Disorders on February 13, 1997. This is the date of Ms. Thurman's initial oral defense of her dissertation. The card is dated by hand at the bottom right on January 29, 1998, apparently by Dean Larkin's secretary. We know, however, that the alleged meeting was not held on January 29, 1998, because Hoffman, the committee chair, wrote to Ms. Thurman on January 28, 1998, to advise her that the committee had met and voted to fail her dissertation. So the card does not tell us when or where the alleged meeting was held.

In fact, the *Graduate Bulletin* states the following:

> A request for the final examination must be submitted to the Graduate School by the student's department chair at least three weeks prior to the proposed examination date, and by the current semester deadline, if the student is a candidate for a degree (see the "Academic Calendar" for all pertinent dates). This request must specify the major and minor fields (if appropriate), dissertation title, time and place proposed for the examination, and nominations for the examining committee.

Graduate Bulletin, p. 49. LSU failed to comply with its own procedures in this regard, another substantial departure from accepted academic norms. Ms. Thurman's department chair, Hoffman, was to have submitted a request for final examination before the exam date. LSU has not produced any request or document setting forth the exam date. The request "must specify . . . time and place proposed for the examination," and yet we still do not know when or where the final examination is supposed to have occurred.

Hoffman was asked about the meeting in his deposition. He stated that "It would have been within a few days of my writing that [January 28] letter, and it probably occurred in Jan Norris' office because she's got a big table." LSU now appears to assert that the meeting was held on January 28, which is contrary to Hoffman's sworn deposition testimony ("The card was also signed and approved by Dean Larkin on January 29, the day after the meeting." LSU brief at p.10). There is nothing in the record to suggest that the meeting occurred on January 28, 1998. Hoffman testified that he probably did not send to the

other committee members a copy of his January 28 letter to Ms. Thurman and that he did not make any notes during the meeting that he kept. Hoffman testified that all of the committee members were present at the meeting.

James West, another member of the committee, had a different recollection. He testified that the meeting was held in the same room as the oral dissertation, which was not Norris' office, and that not all of the members of the committee were present. West generally could not remember when the meeting was held, how long the meeting lasted, or "what exactly went on," and in response to the question "Was Ms. Thurman present during this meeting?" answered "I don't believe so."

The fact is that Ms. Thurman is correct when she says that no one knows the date or location of the meeting and that there are no records or notes of this meeting. This is an important alleged meeting, as it is the meeting where LSU supposedly voted to fail Ms. Thurman. Ms. Thurman has made no false allegations, and LSU makes false allegations when it accuses her of doing so. The confusion regarding the date, location, and even occurrence of the meeting is caused solely by LSU's failure to follow its own published procedures as outlined in the *Graduate Bulletin*.

LSU also makes false allegations when it states that LSU "allowed [Ms. Thurman] to go forward with another committee and yet another revision of her paper." (LSU brief at p.12). This statement is absolutely false, and LSU knows it is false. As discussed in Ms. Thurman's original brief, ***LSU never appointed another committee***. Thus, LSU's section entitled "Thurman Never Did Resubmit Her Dissertation" is disingenuous in the extreme. Ms. Thurman did not resubmit her dissertation because she could

not: LSU had not appointed a committee, and there was no one to whom she could submit her dissertation.

Ms. Thurman asked LSU to let her know to whom she could send her dissertation. It is LSU's responsibility, not Ms. Thurman's, to appoint a committee. Not only does common sense tell us this, the fact is that after he disbanded the original committee for its apparent negligence, Dean Larkin wrote to Ms. Thurman on December 22, 1998, stating, "I will select an appropriate faculty committee to conduct your dissertation defense. The list of committee members will be sent to you so that you may contact them for assistance." The problem at the heart of this case is that ***LSU never appointed a committee for Ms. Thurman after this letter***. LSU seems oblivious to this fact, as it purports to blame Ms. Thurman for not submitting her dissertation in the spring semester 1999. LSU's failure to appoint a committee after promising to do so is itself a substantial departure from accepted academic norms and reflects a failure to exercise professional judgment.

LSU did not appoint a committee or do anything else after the reports of Professors Tashakkori and Wandersee. Their reports condemned not Ms. Thurman, but her advisory committee. Their reports indicated that the design of the study was flawed, as was the statistical analysis employed, both elements that were specifically not only approved but directed by Ms. Thurman's advisory committee. The reports of these professors showed that Ms. Thurman had been misled and misdirected by her committee.

LSU states that Ms. Thurman is "the only person involved in this litigation who believes that she deserves a

Ph.D." (LSU brief at p.17). This case is not about whether or not Ms. Thurman deserves a Ph.D.; it is about whether she deserves due process. Ms. Thurman was entitled to be treated fairly and not arbitrarily, and this Court should not be distracted by LSU's argument. This case is not about academic judgment, but about fundamental fairness. Ms. Thurman is here because she was denied due process, not because she was denied a Ph.D.

CONCLUSION

As LSU's brief makes clear, there are genuine issues of material fact concerning whether and to what extent LSU officials departed from accepted academic norms, and whether and to what extent LSU officials failed to exercise professional judgment. It is undisputed that LSU failed to follow its own published policies and procedures, and failed to keep specific promises made to Ms. Thurman, in significant respects. There are important issues presented that should be allowed to go to a jury. This Court should reverse the Louisiana appellate court's grant of summary judgment and find, as did the trial court, that summary judgment is inappropriate in this case.

Respectfully submitted,

SCOTT D. WILSON
SCOTT D. WILSON
A Professional Law Corporation
7916 Wrenwood Boulevard
Suite B
Baton Rouge, LA 70809
(225) 216-7722